

In re:)
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 GREAT NORTHERN NEKOOSA) EPA Docket No.
 CORPORATION,) TSCA-I-87-1041
)
 Respondent.)
)

I.

The United States Environmental Protection Agency ("EPA") filed on February 10, 1987 an Administrative Complaint in this matter pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for violations of Section 15 of TSCA, 15 U.S.C. § 2614;

Section 15(c) of TSCA, 15 U.S.C. § 2614, states that it shall be unlawful for any person to fail to comply with any rule promulgated under Section 5 or 6 of TSCA, 15 U.S.C. §§ 2604 and 2605;

The regulations entitled "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions," 40 C.F.R. Part 761, were promulgated pursuant to Section 6 of TSCA;

EPA's Administrative Complaint alleges that Respondent Great Northern Nekoosa Corporation ("Great Northern") violated the regulations concerning the marking, recordkeeping and storage for

disposal of polychlorinated biphenyls ("PCBs"), 40 C.F.R. Part 761, Subparts C, D, and J, at its facility in East Millinocket, Maine;

Several of the counts in the Complaint concerned the discovery of PCB spills which resulted in contamination of the ground at the No. 5 Paper Machine Site and the No. 6 Paper Machine Site at the East Millinocket, Maine facility;

After discovery of the spills at the No. 5 and No. 6 Paper Machine sites, Great Northern identified another contaminated site known as the Chemi-Groundwood Site;

On July 22, 1988, Great Northern completed Remediation Plans for the No. 5 Paper Machine Site, the No. 6 Paper Machine Site, and the Chemi-Groundwood Site, and completed a Technical Specification for the remediation of the three sites in July 1989;

On November 13, 1990, Great Northern revised a Workplan for Wall Decontamination, originally drafted in September of 1990, for the PCB-contaminated brick wall of the building located next to the No. 5 Paper Machine Site;

On September 18, 1990, Great Northern completed Technical Specifications for Wall Decontamination for the PCB-contaminated brick wall of the building located next to the No. 5 Paper Machine Site;

Each of the Plans and Specifications described in the preceding three paragraphs has been reviewed and approved by EPA, and Great Northern has submitted to EPA documentation representing that Great Northern has performed the work described therein;

EPA alleges that the PCB spills at the Sites constitute

hazardous substances, pollutants, and/or contaminants as defined by Sections 101(14) and 101(33) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601(14) and 9601(33), and that PCBs have been released into the environment from the Great Northern facility in East Millinocket, Maine;

EPA alleges that the PCB spills at the Sites required response actions to be undertaken pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604;

EPA alleges that, in performing these response actions, it has incurred and accounted for response costs (within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) §§101(25) and 107(a)) at or in connection with the Sites as of the effective date of this Agreement;

EPA alleges that the response actions it has performed to date and the response costs it has incurred in connection with the Sites are not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300;

EPA alleges that Great Northern is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred and to be incurred at or in connection with the Sites;

EPA and Great Northern ("the Parties") agree that implementation of the Remediation Plans, the Technical Specification, the Workplan for Wall Decontamination, and the Technical Specifications for Wall Decontamination, in addition to

the requirements for future monitoring, reporting and other actions contained in this Consent Agreement and Final Order, has attained a degree of cleanup of PCBs released into the environment and control of further releases which at a minimum is consistent with the requirements of TSCA and the federal regulations promulgated thereunder, and that this Consent Agreement and Final Order does not provide a release to Great Northern with regard to the standard of cleanup under any other federal statute or regulation;

The Parties recognize that implementation of this Consent Agreement and Final Order has expedited the remediation of the three PCB contaminated sites, will avoid prolonged and complicated litigation between the Parties involving civil penalties and reimbursement of government costs incurred in the oversight of the cleanup, and that entry of this Consent Agreement and Final Order is therefore in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II.

JURISDICTION

(i) EPA has jurisdiction over this matter pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2515(a). Great Northern stipulates to the jurisdiction over the subject matter alleged in the Complaint, and that the Complaint states a claim upon which relief can be granted against Great Northern. Great Northern waives any defenses it might have as to jurisdiction and venue; and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.

(ii) Section XVI of this Consent Agreement and Final Order, Reimbursement for Response Costs, concerns the recovery of costs incurred by EPA at the Great Northern Site in East Millinocket, Maine as of the effective date of this Agreement. The authority to enter into Section XVI of this Agreement is vested in the President by Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1). This authority was delegated to the Administrator of the United States Environmental Protection Agency on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (January 29, 1987), and further delegated to the Regional Administrator, Region I, of EPA, by EPA Delegation No. 14-14-D (September 13, 1987).

III.

PARTIES BOUND

The benefits and burdens of this Consent Agreement and Final Order apply to and are binding upon the undersigned parties and their successors, assigns and contractors. The undersigned representative of each party to this Consent Agreement and Final Order certifies that he or she is fully authorized by the party whom she or he represents to enter into the terms and conditions of the Consent Agreement and Final Order and to execute and legally bind that party to it. Great Northern shall provide a copy of this Consent Agreement and Final Order to any contractor and require a copy be provided to each subcontractor hired to perform any remaining work required by this Consent Agreement and Final Order and shall condition all contracts, and require all subcontracts (to the extent they relate to such work) to be conditioned, upon

performance of the work in conformity with the terms of this Consent Agreement and Final Order.

IV.

DEFINITIONS

Unless noted to the contrary, the terms of this Consent Agreement and Final Order shall have the meaning assigned to those terms by the Toxic Substances Control Act, 15 U.S.C. § 2501 et seq., or the regulations promulgated thereunder at 40 C.F.R. Part 761. Whenever the terms listed below are used in this Consent Agreement and Final Order, the following definitions shall apply:

A. "Cleanup" shall mean the implementation, in accordance with Section VI, hereof, of the tasks described in the Remediation Plans, the Workplan for Wall Decontamination, the Technical Specification, and the Technical Specifications for Wall Decontamination. "Cleanup" shall not include implementation of the groundwater monitoring plan by Great Northern in accordance with Section VII, hereof.

B. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or legal holiday. In computing any period of time under this Consent Agreement and Final Order, where the last day would fall on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next working day.

C. "EPA" shall mean the United States Environmental Protection Agency.

D. "Great Northern" shall mean Great Northern Nekoosa

Corporation.

E. "Parties" shall mean EPA and Great Northern.

F. "PCB" shall mean polychlorinated biphenyl.

G. "Quality Assurance Project Plan" shall mean the plan which specifies the quality assurance measures applied to the implementation of the remediation plans at the Sites, as set forth in Great Northern's Quality Assurance Project Plan, revised in July 1989 and as amended, attached hereto as Appendix E.

H. "Remediation Plans" shall mean the three Remediation Plans for the No. 5 Paper Machine Site, the No. 6 Paper Machine Site, and the Chemi-Groundwood Site, completed by Great Northern on July 22, 1988, and attached hereto as Appendices B, C, and D.

I. "Response Costs" as used in Section XVI of this Agreement shall include any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to costs incurred and accounted for by EPA during its oversight of the cleanup conducted at or in connection with the Sites as of the effective date of this Agreement and not inconsistent with the National Contingency Plan.

J. "Sites" shall mean the three specific PCB contaminated sites identified by Great Northern as the No. 5 Paper Machine Site, the No. 6 Paper Machine Site, and the Chemi-Groundwood Site. These three sites are located at Great Northern's East Millinocket, Maine facility. The limits of these three sites are set forth in the July 22, 1988 Remediation Plans and the Technical Specification.

K. "Technical Specification" shall mean the technical engineering specifications for implementation of the remediation

plans at the Sites, as set forth in Great Northern's July 14, 1989 Technical Specification, as amended on September 11, 1989. The Technical Specification is attached hereto as Appendix A.

L. "Technical Specifications for Wall Decontamination" shall mean the technical engineering specifications for implementation of the Workplan for Wall Decontamination, as set forth in Great Northern's September 18, 1990 Technical Specifications for Wall Decontamination, attached hereto as Appendix G.

M. "TSCA" shall mean the Toxic Substances Control Act, 15 U.S.C. § 2501 et seq.

N. "Work" shall mean activities required by the Consent Agreement and Final Order, including the implementation, in accordance with Section VI, hereof, of the tasks described in the Remediation Plans, the Workplan for Wall Decontamination, the Technical Specification, the Technical Specifications for Wall Decontamination, and the implementation of the groundwater monitoring plan required to be submitted in accordance with Section VII, hereof. "Work" shall not include reimbursement of response costs under Section XVI of this Consent Agreement and Final Order.

O. "Workplan for Wall Decontamination" shall mean the workplan developed for the PCB-contaminated brick wall of the building located next to the No. 5 Paper Machine Site, as set forth in Great Northern's Workplan for Wall Decontamination, originally drafted in September of 1990, and revised on November 13, 1990, attached hereto as Appendix F.

V.

GENERAL PROVISIONS1. Objectives of the Parties

The objectives of the Parties in entering into this Consent Agreement and Final Order are to protect public health, welfare and the environment from releases or threatened releases of PCBs from the Sites by the investigation, development, design and implementation of remedial and monitoring programs by Great Northern, and to reimburse EPA for response costs incurred during its oversight of the cleanup conducted at or in connection with the Sites as of the effective date of this Agreement.

2. Effect of Settlement

The execution of this Consent Agreement and Final Order is not an admission of liability with respect to any issue dealt with in this Consent Agreement and Final Order nor is it an admission or denial of the factual allegations set out in the complaint.

3. Commitment of Great Northern

a. Great Northern certifies that it has financed and performed all remedial activities at the Sites, including the remedial work set forth in Section VI, and agrees to finance and perform the groundwater monitoring required under Section VII, and to finance and perform any other activities required as a result of the groundwater monitoring data.

b. Great Northern represents that the Work set forth in Section VI has been completed in accordance with the standards, specifications and within the time periods as prescribed in Section

VI and in the Technical Specification and Technical Specification for Wall Decontamination, which are incorporated herein by reference, subject to the Force Majeure provisions of Section XVIII.

c. Great Northern shall assume any and all liability arising from or relating to their acts or omissions in the performance of the Work or their failure to perform fully or complete the requirements of this Consent Agreement and Final Order.

d. Great Northern shall reimburse EPA, to the extent set forth in section XVI of this Consent Agreement and Final Order, for costs incurred and accounted for as of the effective date of this Agreement during oversight of the cleanup at or in connection with the Sites.

4. Permits and Approvals

a. Great Northern certifies that, to the best of its knowledge, it obtained all permits or approvals necessary for the Work. However, to the extent that any permit or approval necessary for the Work was not obtained, nothing in this Consent Agreement and Final Order shall be interpreted as relieving Great Northern of liability for failure to obtain such permit or approval.

b. This Consent Agreement and Final Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

5. Conveyance of the Site

a. Within sixty days of approval of this Consent Agreement and Order, Great Northern as owner of the East Millinocket facility

shall record a memorandum of this Consent Agreement and Final Order in the Registry of Deeds of Penobscot County, State of Maine, in accordance with that locality's recording and conveyance standards.

b. In any deed transferring property subject to this Agreement, Great Northern shall include notice, and provide that a deed to any subsequent grantee shall include notice, that the property is subject to this Agreement, and that the grantee shall provide notice to EPA and to the Commissioner of the Maine Department of Environmental Protection at least ten (10) days prior to any future excavations in those areas identified in the Remedial Plans as containing PCBs, except in the event of an emergency, in which case the deed shall require notice to EPA and the Maine Department of Environmental Protection within twenty-four (24) hours after the commencement of such excavations.

c. Title to the Sites as described herein may be freely conveyed, provided that within twenty (20) days of such conveyance, Great Northern notifies EPA of such conveyance, the name of the grantee, and a description of Great Northern's obligations under this Consent Agreement and Final Order, if any, to be performed by such grantee. In the event of such conveyance, all of Great Northern's obligations pursuant to this Consent Agreement and Final Order shall continue to be met by Great Northern and, subject to approval by the United States, the grantee.

6. Future Disruption of the Sites

a. Once Great Northern has completed the Remedial Action, Great Northern must notify EPA and the Commissioner of the Maine

DEP in writing ten (10) business days prior to beginning any activities at any of the Sites involving the excavation or any other movement of soils or other debris below the layer of uncontaminated soil overlaying PCB contaminated soil, and of excavation of PCB contaminated soil under buildings at any of the Sites. If an emergency situation exists, Great Northern must notify EPA and Maine DEP by telephone or telefax within 24 hours after the commencement of activities otherwise requiring written notification.

b. Prior to undertaking any of the excavation activities described in this Section (except in emergency situations), Great Northern will determine PCB levels of excavated soil using scientifically accepted testing methods and will provide the results of such testing at EPA's request. In the event of an emergency, Great Northern will determine PCB levels of excavated soil as soon as is practicable.

c. When excavating soils from any of the Sites below the uncontaminated layer of soil, care must be taken to control dust, runoff or other means of off-site deposition of contaminated soil and protect workers within the Sites from exposure to the contaminated soil.

d. All such excavated soil or debris containing greater than 1 ppm PCBs that is not placed back within the Sites under at least a two-foot layer of uncontaminated soil must be disposed of off-site as PCB Waste, except that such material found to contain 50 ppm PCBs or greater must not be placed back within the Sites, but

must immediately be marked, stored for disposal, and disposed of as PCB Waste. Upon EPA's request, Great Northern shall provide evidence of such disposal in the form of a manifest or certification of destruction.

e. Great Northern will institute procedures or take other actions, including but not limited to providing notice to all relevant persons at relevant times, to reasonably ensure that PCB contaminated soil is not inadvertently excavated and to further ensure that Great Northern's employees, contractors, and agents comply with the above procedures.

VI.

PERFORMANCE OF THE CLEANUP BY GREAT NORTHERN

7. Great Northern certifies that it has performed the Cleanup of the Sites in accordance with the Technical Specification, Appendix A, the Remediation Plans, Appendices B, C, and D, the Workplan for Wall Decontamination, Appendix F, and the Technical Specifications for Wall Decontamination, Appendix G. The Technical Specification, Remediation Plans, the Workplan for Wall Decontamination, and the Technical Specifications for Wall Decontamination, are incorporated into and made an enforceable part of this Consent Agreement and Final Order.

8. Great Northern certifies that it completed the Cleanup on January 4, 1991.

9. Great Northern certifies that the Cleanup performed by Great Northern pursuant to this Consent Agreement and Final Order

has, at a minimum, achieved the following performance standards and requirements: (a) the sampling and analysis performed pursuant to Great Northern's Quality Assurance Project Plan, attached hereto as Appendix E, has demonstrated cleanup of the soil to the levels provided for in the Remediation Plans and Technical Specification; and (b) on the brick wall of the building adjacent to the No. 5 Paper Machine Site, statistical sampling conducted in accordance with the Quality Assurance Project Plan and Workplan for Wall Decontamination reveals less than 100 micrograms of PCBs per 100 square centimeters.

VII.

GROUND WATER MONITORING

10. Great Northern certifies that it has submitted the results of the sampling done pursuant to its January 23, 1989 Ground Water Monitoring Plan.

11. Great Northern has submitted to EPA and the Maine Department of Environmental Protection for approval in accordance with Section XII, hereof, a plan for long-term groundwater monitoring at the Sites. Great Northern shall implement the Plan, as approved by EPA and the Maine Department of Environmental Protection. EPA reserves the right to require Great Northern to take such action as is necessary to address any PCB contamination revealed by the groundwater monitoring at the Sites.

VIII.

ADDITIONAL WORK

12. In the event that EPA or Great Northern determines that

additional remediation work is necessary to meet the Performance or Clean-up Standards described in Section VI, notification of such additional work will be provided to the Project Coordinator for the other party.

13. Any additional work determined to be necessary by Great Northern is subject to approval by EPA.

14. Any additional work determined to be necessary by Great Northern and approved by EPA, or determined to be necessary by EPA to meet the Performance or Clean-up Standards, shall be completed by Great Northern in accordance with the standards, specifications, and schedules approved by EPA.

15. Unless otherwise stated by EPA, within 30 days of receipt of notice by EPA that additional work is necessary, Great Northern shall submit for approval by EPA a work plan for the additional work. Upon approval pursuant to the procedures set forth in Section XII, Great Northern shall implement the plan for additional work in accordance with the schedule contained therein.

IX.

QUALITY ASSURANCE, SAMPLING

16. Great Northern certifies that it used quality assurance, quality control, and chain of custody procedures in accordance with its Quality Assurance Project Plan, attached hereto as Appendix E. Sampling data generated consistent with the Quality Assurance Project Plan shall be admissible as evidence, without objection (except as to weight), in any proceeding under Section XIX of this Consent Agreement and Final Order. Great Northern will continue to

assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Great Northern in implementing this Consent Agreement and Final Order. In addition, Great Northern shall have a designated laboratory analyze samples submitted by EPA for quality assurance monitoring.

17. Great Northern has made available to EPA the results of all sampling and/or tests generated by Great Northern with respect to its obligations under this Consent Agreement and Final Order, and has submitted these results in monthly progress reports as described in Section XI of this Consent Agreement and Final Order.

18. Great Northern has allowed and will continue to allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by Great Northern pursuant to the implementation of this Consent Agreement and Final Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

X.

ACCESS

19. From the date of entry of this Consent Agreement and Final Order until EPA certifies completion of the Cleanup pursuant to Section XV, the United States and its representatives, including EPA and its contractors, shall have access at all times to the Sites and any property to which access is required for the implementation of this Consent Agreement and Final Order, to the extent access to the property is controlled by or available to Great Northern, for the purposes of conducting any activity

authorized by or related to this Consent Agreement and Final Order, including, but not limited to:

- a. Monitoring the Work or any other activities taking place on the property;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Sites;
- d. Obtaining samples;
- e. Assessing the need for or planning and implementing additional response actions at or near the Sites; and
- f. Inspecting and copying records, operating logs, contracts, or other documents required to assess Great Northern's compliance with this Consent Agreement and Final Order.

Upon exercising its right of access to the Sites and any property to which access is required for the implementation of this Consent Agreement and Final Order, EPA will make every attempt to conform to Great Northern's safety requirements, as set forth in its Safety and Health Plan developed pursuant to the Technical Specification.

20. Notwithstanding any provision of this Consent Agreement and Final Order, EPA retains all of its access authorities and rights under TSCA, CERCLA, RCRA and any other applicable statute or regulations.

XI.

REPORTING REQUIREMENTS

21. Great Northern has submitted to EPA written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Agreement and Final Order during the previous month; (2) include all results of sampling and tests received by Great Northern during the course of the work; (3) include all plans and procedures completed under the Technical Specification during the previous month; (4) include copies of all manifests for the removal of contaminated soils and materials; (5) describe the amounts of materials and soils removed from each of the Sites, categorized by type of material or soil and date of removal; (6) describe all actions, data and plans which had been scheduled for the next month and provide other information relating to the progress of construction as is customary in the industry; (7) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect Great Northern's ability to complete the Cleanup in accordance with the time set forth in this Consent Agreement and Final Order, and a description of efforts made to mitigate those delays or anticipated delays.

22. Upon the occurrence of any event during performance of the work which, pursuant to Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9603, requires reporting to the National Response Center, Great Northern shall promptly orally notify the Region I

PCB Coordinator and the EPA On-Scene Coordinator ("OSC"), Arthur Wing, EPA Environmental Services Division, 60 Westview Street, Lexington, Massachusetts 02173, or in the event of the unavailability of the EPA OSC, the Emergency Response Section, Region I, United States Environmental Protection Agency (twenty-four hour emergency response line: 617-223-7265), in addition to the reporting required by Section 103. Within 20 days of the onset of such an event, Great Northern shall furnish to the EPA OSC or Emergency Response Section, as appropriate, a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Great Northern shall submit a report setting forth all actions taken to respond thereto.

XII.

SUBMISSIONS REQUIRING AGENCY APPROVAL

23. Upon receipt of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Agreement and Final Order, EPA shall within sixty (60) days, unless EPA provides an explanation for the delay, either: (1) approve the submission; (2) disapprove the submission, notifying Great Northern of deficiencies; or (3) modify the submission to cure the deficiencies.

24. In the event of approval or modification, Great Northern shall proceed to take any action required by the plan, report, or other item, as approved or modified, or exercise its rights pursuant to the dispute resolution provisions of this agreement.

25. Upon receipt of a notice of disapproval, Great Northern shall correct the deficiencies and resubmit the plan, report, or other item for approval within thirty (30) days (or such other time as the parties agree upon). Notwithstanding the notice of disapproval, Great Northern shall proceed to take any action required by any non-deficient portion of the submission, unless such implementation is inconsistent with the disapproved portion of the submission.

26. If, upon resubmission, the plan, report, or item is not approved, Great Northern shall be deemed to be in violation of this Consent Agreement and Final Order, subject to the dispute resolution provisions of this Agreement.

XIII.

PROJECT COORDINATORS

27. Within twenty (20) calendar days of the effective date of this Consent Agreement and Final Order, Great Northern shall provide to EPA, in writing, the name, address and telephone number of the former's designated Project Coordinator. EPA's project coordinator is Anthony Palermo, EPA Region I PCB Coordinator, and the On-Scene Coordinator for purposes of CERCLA oversight and cost recovery is Arthur Wing, EPA - Environmental Services Division, 60 Westview Street, Lexington, Massachusetts 02173. If a Project Coordinator, or OSC initially designated is changed, the identity of the successor shall be given to the other party within 10 working days before the changes.

28. EPA may designate other representatives, including EPA

and State employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Agreement and Final Order. The OSC shall have authority consistent with the National Contingency Plan, 40 C.F.R. Part 300, promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., to halt, conduct, or direct any work required by this Consent Agreement and Final Order and, to take any necessary response action when he or she determines that conditions at the Sites may present an imminent and substantial endangerment to public health or welfare or the environment.

XIV.

CONFIRMATION OF COMPLETION

29. If EPA concludes, based upon representations made by Great Northern, that the Cleanup has been fully performed consistently with this Consent Agreement and Final Order, and EPA further concludes that the necessary action has been taken to mitigate the public health hazards and threats and the other threats posed by the Sites, as set forth in the Action Memorandum dated August 7, 1989, EPA will provide Great Northern with written confirmation of that determination. This confirmation shall constitute the "Confirmation of Completion of the Cleanup" for purposes of this Consent Agreement and Final Order. Such confirmation does not constitute a release from liability, a covenant not to sue, or a waiver of any present or future claims which EPA may have against Respondent, other than such liability as

is otherwise released in this Agreement.

XV.

ENDANGERMENT AND FUTURE RESPONSE

30. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of a hazardous substance, or which may present an imminent and substantial endangerment to public health or welfare or the environment, Great Northern shall immediately take all appropriate action to prevent, abate, or minimize such release or endangerment, and shall immediately notify the OSC; or, if the OSC is unavailable, the EPA Emergency Response Unit, Region I. Great Northern shall take such action in accordance with all applicable provisions of the Health and Safety Plan developed pursuant to the Technical Specification. In the event that Great Northern fails to take appropriate response action as required by this Section, and EPA takes such action instead, Great Northern shall reimburse all costs of the response action defined by CERCLA. Payment of such response costs shall be made in the manner described in Section XVI, as applicable, within thirty (30) days of Great Northern's receipt of demand for payment and an appropriate accounting of the costs incurred. The bill for these costs will consist of a line-item summary of costs incurred during the preceding year; the summary will include a breakdown of costs by category, including without limitation payroll, travel, indirect costs, and contracts, and a brief narrative of work related to such costs (generally one to two paragraphs in length).

31. Nothing in the preceding paragraph shall be deemed to limit the power and authority of the United States, the State of Maine, or any Court to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Sites.

XVI.

REIMBURSEMENT OF RESPONSE COSTS

i) jurisdiction

32. Section II (ii), on pages 4 and 5 of this Consent Agreement and Final Order, is hereby incorporated by reference.

33. Great Northern consents to and will not contest EPA's authority to enter into Section XVI of this Agreement, and agrees and submits to the jurisdiction asserted in Section XVI of this Agreement for the purpose of any subsequent proceedings for the enforcement of Section XVI of this Agreement.

ii) response costs

34. In entering into Section XVI of this Agreement, the mutual objective of EPA and Great Northern is to settle EPA's claims against Great Northern for response costs incurred and accounted for at or in connection with the Sites as of the effective date of this Agreement.

35. Great Northern shall make payment to EPA for the response costs incurred and accounted for at or in connection with the Sites as of the effective date of this Agreement in the amount of two hundred and ten thousand dollars (\$ 210,000) (the "Cost

Reimbursement Settlement Payment") within thirty (30) days after the effective date of Section XVI of this agreement.

iii) stipulated penalties

36. If Great Northern fails to tender the entire Cost Reimbursement Settlement Payment for Section XVI of this Agreement within thirty (30) days after the effective date of Section XVI of this Agreement, Great Northern shall be liable to pay the sums set forth below as stipulated penalties:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st - 5th day	\$1,000.00
6th - 10th day	\$2,000.00
each day thereafter	\$5,000.00

37. Any such penalty shall be due and payable within ten (10) days of the receipt of a written demand from EPA. Payment for stipulated penalties shall be made as set forth in Paragraph 39 below. Penalties shall accrue regardless of whether EPA has notified Great Northern of its failure to make a timely payment.

38. In the event that Great Northern fails to pay stipulated penalties as provided in Paragraphs 36 and 37, EPA may institute proceedings in the United States District Court to recover such stipulated penalties and for any other appropriate relief. In any such action the terms of Section XVI of this Agreement shall not be subject to judicial review. The stipulated penalties set forth in this section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of a refusal or failure to comply with the terms or conditions of Section XVI of this Agreement, including, but not limited to, an

enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3).

iv) method of payment

39. The Settling Parties shall make all payments to EPA required under Sections XVI(ii) and (iii) above by certified or cashier's check, payable to the "Environmental Protection Agency, Hazardous Substance Superfund". The check shall reference the name of the Sites and the EPA docket number for this Agreement. The transmittal letter accompanying each such payment shall reference that the payment is for response costs incurred at the Great Northern Sites, and shall be mailed to the following address:

Region I
U.S. Environmental Protection Agency
Attn: Hazardous Substance Superfund Accounting
P.O. Box 360197M
Pittsburgh, Pennsylvania 15251

Great Northern shall simultaneously send a copy of the transmittal letter and check to:

Anthony Palermo
Office of Pesticides and Toxic Substances
U.S. Environmental Protection Agency
John F. Kennedy Federal Building, APT
Boston, Massachusetts 02203

and

Mary Dever
U.S. Environmental Protection Agency
Environmental Services Division
60 Westview Street
Lexington, Massachusetts 02173

v) release for covered matters

40. In consideration, and upon payment, of the amounts specified in Paragraph 35 of Section XVI of this Agreement, EPA

agrees that such payment shall represent full satisfaction of the United States's claim against Great Northern for "Covered Matters." "Covered Matters" shall include any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for reimbursement of response costs incurred and accounted for by EPA at or in connection with the Sites as of the effective date of this Agreement. Nothing in Section XVI of this Agreement shall be construed to require EPA to enter into any later agreement with respect to the Great Northern Sites with Great Northern, or to prevent EPA from performing any response actions at the Site, and shall not prevent EPA from recovering response costs incurred and accounted for after the effective date of this agreement or from requiring Great Northern to perform any response actions at the Sites, nor shall it prevent Great Northern from disputing any such actions by EPA under the dispute resolution provisions of this Agreement.

vi) reservation of rights

41. Nothing in Section XVI of this Agreement is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against Great Northern for:

a. Any liability as a result of failure to make timely payments as required by Section XVI of this Agreement; or

b. Any matters not expressly included in Covered Matters, including, without limitation, any liability for (i)

injunctive relief at the Sites, (ii) response costs incurred and accounted for at the Sites after the effective date of this Agreement, or (iii) damages to natural resources.

42. Nothing in Section XVI of this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement. Except as specifically set forth herein as Covered Matters in Section XVI of this Agreement, Section XVI of this Agreement shall not estop or limit any legal or equitable claims of the United States against Great Northern, their agents, contractors, successors, or assigns, including but not limited to, claims related to releases of hazardous substances or other pollutants or contaminants.

viii) public comment period

43. Final acceptance by EPA of Section XVI of this Agreement shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment on the proposed settlement, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the thirty (30) day public comment period held pursuant to Section 122(i) of CERCLA, EPA may withhold consent to all or part of Section XVI of this Agreement if comments

received disclose facts or considerations which indicate that Section XVI of this Agreement is inappropriate, improper or inadequate. Otherwise, Section XVI shall become effective when EPA issues notice to Great Northern that the former is not withdrawing from this section of the Agreement.

ix) effective date

44. The effective date of Section XVI of this Agreement shall be the date upon which EPA issues written notice to Great Northern that the public comment period pursuant to Paragraph 43 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

XVII.

INDEMNIFICATION AND INSURANCE

45. Great Northern shall indemnify and save and hold harmless the United States, its officials, agents, employees, contractors, or representatives from any and all claims or causes of action arising from or on account of acts or omissions of Great Northern, their officers, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Agreement and Final Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Great Northern in carrying out activities pursuant to this Consent Agreement and Final Order. Neither Great Northern nor any such contractor shall be considered an agent of the United States.

46. Great Northern waives, and shall indemnify and hold

harmless the United States with respect to, any claims for damages or reimbursement from the United States, or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Great Northern and any person for performance of work on or relating to the Sites, including claims on account of construction delays.

47. Great Northern certifies, and has submitted documentation to prove, that it has the ability to be financially responsible for the indemnification referenced in Paragraphs 45 and 46, above, in accordance with the standards set forth in 40 C.F.R. 264.147(f). Great Northern shall submit its corporate annual report to EPA, annually, within thirty (30) days of the anniversary of the effective date of this Agreement, for a period of three years beginning one year following the effective date of this Agreement.

XVIII.

FORCE MAJEURE

48. "Force Majeure" is defined for the purposes of this Consent Agreement and Final Order as an event arising from circumstances beyond the control of Great Northern and of any entity controlled by Great Northern, including their contractors and subcontractors, which delays or prevents the performance of any obligation (with the exception of Great Northern's obligations under Section XVI of this Consent Agreement and Final Order) under this Consent Agreement and Final Order. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, or non-attainment of the goals and standards set

forth in Section VI, hereof, and does not apply to Reimbursement of Response Costs under Section XVI of this Consent Agreement and Final Order.

49. When circumstances occur which may delay or prevent the completion of any phase of the Work, whether or not caused by a Force Majeure event, Great Northern shall notify the EPA Region I PCB Coordinator and the EPA OSC orally of the circumstances within five working days after it first became aware of them. Within ten (10) working days after Great Northern first became aware of such circumstances, Great Northern shall supply to EPA in writing an explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measures taken and to be taken by Great Northern to prevent or minimize the delay or correct the noncompliance, and the timetable for implementation of such measures. Failure to give timely oral and written notice to EPA in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the circumstances in question.

50. If EPA agrees that a delay is or was caused by a Force Majeure event, and that the delay prevents the possibility of completion of the Cleanup by the date specified in Paragraph 8, hereof, the Parties shall agree on extension of the date of completion of the Cleanup. In proceedings on any dispute regarding a delay in performance or other noncompliance, Great Northern shall have the burden of proving (1) that the delay or noncompliance is or was caused by a Force Majeure event, and (2) that the amount of

additional time requested is necessary to compensate for that event.

XIX.

DISPUTE RESOLUTION

51. If Great Northern objects to any EPA notice of disapproval or decision made pursuant to this Consent Agreement and Final Order, including any decision which has resulted in the assessment of stipulated penalties, Great Northern shall notify EPA in writing of its objection within ten (10) business days of receipt of the notice. An EPA Region I official employed at a management level higher than Programmatic Section Chief shall be assigned by EPA to mediate and resolve the dispute. The designated EPA official, the EPA employee whose decision is being disputed, and Great Northern shall have fourteen (14) days from the receipt by EPA of the notification of objection to meet and reach an agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, the designated EPA official shall provide a written decision to Great Northern and Great Northern shall implement the activities required by the EPA decision beginning no later than five (5) days after receipt of the EPA decision. If EPA determines, in its sole discretion, that Great Northern acted in good faith in invoking dispute resolution regarding any EPA notice of disapproval or decision other than an EPA bill for response costs, the time period to implement or complete the disputed EPA decision will be suspended during the pendency of the dispute pursuant to the procedures and deadlines of this Paragraph;

provided however, that the accrual of stipulated penalties shall not be suspended by this provision. Engagement of a dispute resolution between EPA and Great Northern shall not be cause for the delay of any undisputed work or any other undisputed obligations under this Consent Agreement and Final Order. If the decision of the designated official resolving the dispute grants any relief to Great Northern, then no stipulated penalties shall be due for the matter as to which such relief was granted.

In the event that Great Northern does not implement the activities required by the EPA decision, the EPA Regional Administrator may take such civil enforcement actions against Great Northern as may be provided by statutory or equitable authorities, including, but not limited to, the assessment of such civil penalties or damages as are authorized by Sections 122 and 109 of CERCLA.

XX.

STIPULATED PENALTIES

52. With the exception of a failure to comply with the requirements of Section XVI of this Consent Agreement and Final Order (Reimbursement of Response Costs), if Great Northern fails to comply with any requirement of this Consent Agreement and Final Order, including but not limited to the groundwater monitoring described in Section VII of this Agreement, or to perform all required work properly by the deadline set forth in Paragraph 8, Great Northern shall pay to EPA stipulated penalties of \$1,000 per day for each day of each and every violation of said requirements.

53. Stipulated penalties shall begin to accrue on the day that performance is due or noncompliance occurs, and shall continue to accrue through the final day of correction of the noncompliance. Separate penalties shall accrue for each separate violation of this Consent Agreement and Final Order.

54. All penalties due to EPA under this Section shall be payable within thirty (30) days of receipt by Great Northern of notification of noncompliance, and shall be subject to the conditions and method of payment described in Paragraph 58, below.

55. Stipulated penalties due to EPA under this section shall be paid by certified check made payable to the order of the "Treasurer, United States of America," and shall be mailed to EPA--Region I, P.O. Box 360197M, Pittsburgh, PA 15251.

56. The stipulated penalties set forth above shall be in addition to any other remedies, sanctions, or penalties which may be available to the United States or its Agencies or Departments by reason of Great Northern's failure to comply with requirements of this Consent Agreement and Final Order.

XXI.

PENALTY

57. In light of the estimated seven million, two hundred and fifty thousand dollar (\$7,250,000) cost of the Cleanup, EPA has determined that it is fair and proper to reduce the civil penalty from the amount proposed in the Complaint to twenty-two thousand and eight hundred dollars (\$ 22,800).

58. Within thirty (30) days of receiving a copy of this

Consent Agreement and Final Order signed by the Regional Administrator, Region I, Respondent shall submit a cashier's or certified check, to the order of the "Treasurer, United States of America," in the amount of twenty-two thousand and eight hundred dollars (\$22,800), to:

EPA -- Region I
P.O. Box 360197M
Pittsburgh, PA 15251

and shall provide copies of the check to:

Regional Hearing Clerk (RRC)
U.S. Environmental Protection Agency
Region I
John F. Kennedy Federal Building
Boston, MA 02203

and

Anthony Palermo (APT)
Office of Pesticides and Toxic Substances
U.S. Environmental Protection Agency
Region I
John F. Kennedy Federal Building
Boston, MA 02203

Pursuant to 31 U.S.C. § 3717, an executive agency like EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty if it is not paid within thirty (30) calendar days of Respondent's receipt of the Consent Agreement and Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R.

§ 102.13(c). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains

delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 4 C.F.R. § 102.13(e).

59. The penalty specified in Paragraph 57, hereof, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

XXII.

COVENANTS NOT TO SUE BY EPA

60. This Consent Agreement and Final Order constitutes a full and final settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA for the violations of TSCA alleged in the Complaint. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA relating to violations other than those alleged in the Complaint and it is the responsibility of Respondent to comply with said laws and regulations.

XXIII.

COVENANTS BY GREAT NORTHERN

61. Great Northern hereby covenants not to sue the United States for any claims related to or arising from the Work or this Consent Agreement and Final Order, including any direct or indirect claim for reimbursement from the Hazardous Substances Superfund established pursuant to Section 221 of CERCLA, 42 U.S.C. § 9631. Nothing in this Consent Agreement and Final Order shall be deemed

to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.25(d).

XXIV.

ACCESS TO INFORMATION

62. Great Northern shall provide to EPA upon request, all documents and information within their possession and/or control or that of their contractors or agents relating to activities at the Sites or to the implementation of this Consent Agreement and Final Order, including sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to remedial activities. Great Northern shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

63. Great Northern may assert privilege or business confidentiality claims covering part or all of the documents or information submitted to EPA under this Consent Agreement and Final Order to the extent permitted by and in accordance with 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies specific documents or information when they are submitted to EPA, the public may be given access to such documents or information without further notice to Great Northern.

64. No claim of confidentiality shall be made with respect to

any sampling or analytical data or any other documents or information evidencing conditions at or around the Sites.

XXV.

RETENTION OF RECORDS

65. Until six (6) years after EPA confirmation of completion of the Work, Great Northern shall preserve and retain all records and documents now in its possession or control which are necessary to evaluate compliance hereunder. After this document retention period, Great Northern shall notify EPA at least ninety (90) calendar days prior to the destruction of any such records or documents, and, upon request by EPA, Great Northern shall relinquish custody of the records or documents to EPA.

XXVI.

NOTICES AND SUBMISSIONS

66. Whenever, under the terms of this Consent Agreement and Final Order, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals and the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Agreement and Final Order with respect to EPA and Great Northern, respectively.

As to EPA:

The EPA Region I PCB Coordinator: U.S. EPA, JFK Federal Building, Boston, Massachusetts 02203.

The EPA On-Scene Coordinator: Art Wing, EPA Environmental Services Division, 60 Westview Street, Lexington, Massachusetts 02173.

As to Great Northern:

The Project Coordinator

XXVII.

EFFECTIVE AND TERMINATION DATES

67. With the exception of Section XVI of this Consent Agreement and Final Order, which contains conditions for its own effective date, the effective date of this Consent Agreement and Final Order shall be the date upon which this Consent Agreement and Final Order is ordered by EPA.

68. Upon confirmation of Cleanup by EPA, this Consent Agreement and Final Order shall terminate. Termination of this Consent Agreement and Final Order shall not affect the Covenants Not to Sue (Sections XXII and XXIII above), including all reservations pertaining to those covenants, shall not affect Great Northern's obligations for Reimbursement of Response Costs under Section XVI of this Agreement, and shall not affect any continuing obligations of Great Northern, including, but not limited to, those described in Sections V, VI, VII, VIII, XVII, XX, XXI, and XXV.

XXVIII.

U.S. DISTRICT COURT JURISDICTION

69. The Parties hereby agree to submit to, and waive any objections to, the jurisdiction of the U.S. District Court in Maine for enforcement of this Consent Agreement and Final Order.

XXIX.

MODIFICATION OF THIS AGREEMENT

70. This Consent Agreement and Final Order may be amended or modified by mutual agreement of the Parties. Any such agreement shall be in writing and signed by both Parties. EPA may, in its discretion, extend any deadlines or time periods under this agreement whenever it deems such extensions to be appropriate.

For EPA:

Linda M. Murphy
LINDA M. MURPHY, Director
Air Management Division
U.S. Environmental Protection
Agency, Region I

Date: Sept. 27, 1991

Gregory Dain
GREGORY DAIN, Esq.
Assistant Regional Counsel

Date: September 27, 1991

For Great Northern:

Raymond H. Taylor x
Vice President
Great Northern Nekoosa
Corporation

Date: Sept. 24, 1991

Daniel E. Boxer
DANIEL E. BOXER, Esq.
Counsel for Great Northern

Date: September 26, 1991

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Except as provided in Paragraph 44, above, relating to the effective date of Section XVI (Reimbursement of Response Costs), Great Northern is hereby ordered to comply with the terms of the above Consent Agreement, effective immediately.

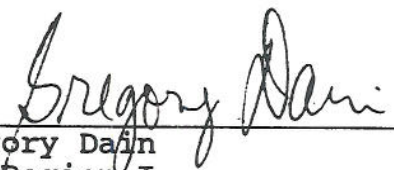
Date: Sept 27, 1991

Paul Keough, Acting
Julie Belaga
Regional Administrator
U.S. Environmental Protection
Agency - Region I

Docket No. TSCA-I-87-1041

CERTIFICATE OF SERVICE

I certify that I filed the original and one copy of the foregoing Consent Agreement and Final Order with the Regional Hearing Clerk, and that I mailed a true copy hereof by certified mail to the Respondent, all this 30th day of September, 1991.



Gregory Dain
EPA Region I
Office of Regional Counsel
JFK Federal Building
Mail Code (RCA)
Boston, MA. 02203-2211